

37 Am. Jur. 2d Fraud and Deceit § 43

American Jurisprudence, Second Edition | May 2021 Update

Fraud and Deceit

George Blum, J.D., John Bourdeau, J.D., Romualdo P. Eclavea, J.D., Janice Holben, J.D., Karl Oakes, J.D. and Eric C. Surette, J.D.

III. Means of Perpetration

A. In General

§ 43. Procuring breach of contract or preventing its fulfillment; fraudulent breach of contract

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Fraud](#)  27, 28

A.L.R. Library

[Punitive damages for interference with contract or business relationship, 44 A.L.R.4th 1078](#)

[Liability for interference with invalid or unenforceable contract, 96 A.L.R.3d 1294](#)

[Liability for procuring breach of contract, 26 A.L.R.2d 1227](#) (secs. 6, 7 superseded in part by [Liability for interference with invalid or unenforceable contract, 96 A.L.R.3d 1294](#), and sec. 45 superseded in part by [Punitive damages for interference with contract or business relationship, 44 A.L.R.4th 1078](#))

Liability for procuring a breach of contract exists where the violation of the contract has been procured by misrepresentation or fraud.¹ To prove a cause of action for breach of contract accompanied by a fraudulent act, a plaintiff must show: (1) a breach of contract; (2) fraudulent intent relating to the breaching of the contract and not merely to its making; and (3) a fraudulent act accompanying the breach.² Certainly, having a contract is a prerequisite to proving a breach of contract accompanied by a fraudulent act.³ Fraud may also be predicated on the action of a contracting party in deliberately and wrongfully making it impossible for himself or herself to perform the contract.⁴

On the other hand, the fraudulent breach of a contract does not give rise to an action for fraud, and therefore, where the only fraud charged relates to a breach of the contract and not to its inducement or making, no action for fraud exists.⁵ Clearly, the breach of a void agreement is not a fraud in law.⁶

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Footnotes

- ¹ Voss v. Becko, 192 F.2d 827 (8th Cir. 1951); Klauder v. Cregar, 327 Pa. 1, 192 A. 667 (1937); Keels v. Powell, 207 S.C. 97, 34 S.E.2d 482 (1945).
- ² Armstrong v. Collins, 366 S.C. 204, 621 S.E.2d 368 (Ct. App. 2005).
- ³ Armstrong v. Collins, 366 S.C. 204, 621 S.E.2d 368 (Ct. App. 2005).
- ⁴ Masini v. Quilici, 67 Nev. 333, 218 P.2d 946 (1950).
- ⁵ Regnell v. Page, 54 A.D.2d 540, 387 N.Y.S.2d 253 (1st Dep't 1976).
- ⁶ Woolley v. Stewart, 222 N.Y. 347, 118 N.E. 847 (1918).

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